

REMARKS

This Amendment is submitted in response to the Office Action mailed on August 29, 2003. Claims 1, 15, 25, 30, 31, 35 and 36 have been amended and claims 1-43 remain in the present application. Applicant's counsel appreciates the courtesy extended by Examiner Weinstein during the personal interview conducted on October 15, 2003. In view of the foregoing amendments, as well as the following remarks, Applicant respectfully submits that this application is in complete condition for allowance and requests reconsideration of the application in this regard.

Claims 1-36 stand rejected under 35 U.S.C. §103(a) as being unpatentable over the San Francisco Examiner article (11/12/96) in view of www.beyondtherainbow2oz.com, further in view of the Packaging Week article (1997); the Atlanta Constitution article (3/30/99); Golub, Russian Patent No. 2111908; the Forbes article (11/8/93); the Charlotte Observer article (3/4/93); the Seattle Times article (12/30/93); the Akron Beacon Journal article (11/11/92); the Star Tribune article (10/17/94); and further in view of Newman, U.S. Patent No. 3,624,787; Beall, U.S. Patent No. 3,956,510; and Ruff, U.S. Patent No. 3,788,463. Applicant has amended each of independent claims 1, 15, 25, 30, 31, 35 and 36 as discussed during the personal interview to more sharply define the present invention over the prior art of record and respectfully requests that the rejections be withdrawn.

In particular, Applicant has amended each of independent claims 1, 15, 25, 30, 31, 35 and 36 to recite that the wad of cotton candy is positioned in the rigid, self-supporting container with the wad in direct contact with an inner surface of the container to clearly define over the prior art of record. While this inventive feature was intended by the language of the originally filed claims, as is apparent from Applicant's disclosure which describes positioning the wad in the container without any mention of pre-packaging of the wad, Applicant has incorporated this recitation in each of the independent claims to positively recite that the wad of cotton candy is positioned in the container without any pre-packaging of the wad, such as being placed in a plastic bag, prior to the wad being positioned in the container. Support for this amendment is clearly provided by the Figures which show the wad (10) positioned in the container (20) with the wad in direct contact with an inner surface of the container, as well as by Applicant's disclosure which describes that the wad is positioned within a container body through an opening in the container (see, for example, Page 14, line 17 through Page 15, line 9). As discussed during the personal interview, Applicant respectfully submits that this amendment does not raise any new issues which would require further search or consideration by Examiner since Applicant's disclosure makes clear that this inventive feature was intended by the language of the originally filed claims. Applicant submits that no new matter is introduced by this amendment as well.

During the personal interview, the applied references were discussed in view of the claims as now amended, and it is respectfully submitted that the prior art of record fails to teach or suggest the combination of elements or steps recited in each of amended independent claims 1, 15, 25, 30, 31, 35 and 36. Accordingly, Applicant submits that the rejections should be withdrawn. In particular, The San Francisco Examiner article refers to "a puff of cotton candy set in a plastic 'Wizard of Oz souvenir bucket'" and is therefore completely silent with respect to positioning the wad in a container with the wad in direct contact with an inner surface of the container as claimed by Applicant.

Examiner's combination of this article with the www.beyondtherainbow2oz.com website further supports patentability of Applicant's claims since the website clearly shows and describes a "cotton candy bag" in item "SC0034" of the Wizard of Oz On Ice Collection in combination with a Wizard of Oz souvenir bucket. Therefore, the website is completely silent as well with respect to positioning the wad in a container with the wad in direct contact with an inner surface of the container as claimed by Applicant and, in fact, teaches away from Applicant's claimed invention since it apparently teaches a pre-packaged bag of cotton candy which is positioned in a souvenir bucket for marketing and sale. The Forbes, Charlotte Observer, Seattle Times, Akron Beacon Journal and Star Tribune articles applied by Examiner all disclose cotton candy in combination with a souvenir bucket, as similarly found in the San Francisco

Examiner article, and clearly fail to teach or suggest Applicant's claimed invention since each of these references is completely silent with respect to positioning the wad in a container with the wad in direct contact with an inner surface of the container as claimed by Applicant.

The Packaging Week and Atlanta Constitution articles each disclose cotton candy packaged in a bag and therefore do not teach or suggest Applicant's claimed invention when taken alone, or in combination with the other prior art of record. Golub discloses a transparent film which serves as packaging for a wad of cotton candy and relies on a needle to inject pressurized air into the thermoplastic bag to thereby protect the enclosed wad (see English translation of Golub at Page 6, lines 14-18, for example). Accordingly, Golub fails to teach or suggest a rigid, self-supporting container as claimed by Applicant. Lastly, the Newman, Beall and Ruff references are each directed to a container for food or other type of product, and simply fail to teach or suggest when taken alone, or in combination with the other prior art of record, the combination of elements or method steps as claimed by Applicant.

As Examiner is aware, rejections must rest on a factual basis. In re Warner 379 F2d 1011, 154 USPQ 173, 177-178 (CCPA 1967). To support such combination rejections as are here made, these facts must arise from the art, and not from "doubts" of patentability, speculation, assumption or hindsight reconstruction to supply deficiencies in the factual basis. Without that suggestion from the art, the combinations, and the rejections, must fall.

There is simply no suggestion or teaching that any packaging apparatus or method of storing and marketing or display of cotton candy could be enhanced by a rigid, self-supporting container with the wad of cotton candy positioned in direct contact with an inner surface of the container as claimed by Applicant.

Accordingly, the attempt by the Examiner to establish a prima-facie case of obviousness is incomplete and the rejections must fail.

As claims 2-14, 16-24, 26-29, 32-34 and 37-43 depend from allowable independent claims 1, 15, 25, 30, 31, 35 and 36, and further as each of these claims recites a combination of elements or steps not taught or suggested by the prior art of record, Applicant submits that these claims are allowable as well.

Conclusion

In view of the foregoing response including the amendments and remarks, this application is submitted to be in complete condition for allowance and early notice to this affect is earnestly solicited. If there is any issue that remains which may be resolved by telephone conference, the Examiner is invited to contact the undersigned in order to resolve the same and expedite the allowance of this application.

Applicant does not believe that this response requires that any fees be submitted, however, if any fees are deemed necessary, these may be charged to Deposit Account No. 23-3000.

Respectfully submitted,

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